

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 233 Elderly Persons and Disabled Adults

SPONSOR(S): Anderson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>7 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>12 Y, 0 N</u>	<u>Kramer/Davis</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u>Leznoff</u>	<u>Hansen</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Chapter 825, Florida Statutes provides that aggravated abuse of an elderly person or disabled adult occurs when a person:

- Commits aggravated battery on an elderly person or disabled adult;
- Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or
- Knowingly or willfully abuses an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult.

The bill reclassifies the offense of aggravated abuse of an elderly or disabled person from a second degree felony to a first degree felony. This will have the effect of increasing the maximum sentence for the offense from fifteen years in prison to thirty years in prison. The bill also requires certified law enforcement personnel to receive training in the identification and investigation of elder abuse and neglect.

On January 17, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. The required law enforcement training has already been implemented; therefore no additional fiscal impact to state government is expected.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility - This bill increases the severity of the sanction for potentially injurious behavior.

B. EFFECT OF PROPOSED CHANGES:

Abuse of an elderly person or disabled adult:

Chapter 825, F.S., provides criminal penalties for offenses committed against elderly persons¹ and disabled adults². Section 825.102(2), F.S., specifies that a person who commits aggravated abuse of an elderly person or disabled adult commits a felony of the second degree. According to this provision, aggravated abuse of an elderly person or disabled adult occurs when a person:

1. Commits aggravated battery on an elderly person or disabled adult;
2. Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or
3. Knowingly or willfully abuses an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult.

This bill reclassifies the offense of aggravated abuse of an elderly person or disabled adult from a second degree to a first degree felony. Aggravated child abuse is currently a first degree felony.³ This will have the effect of increasing the maximum sentence for the offense from fifteen years in prison to thirty years in prison. The bill does not change the ranking of the offense within the offense severity ranking chart of the Criminal Punishment Code. The offense of aggravated abuse of an elderly person or disabled adult is currently ranked in level eight of the chart. As under current law, the lowest permissible sentence for a first time offender who commits this offense and has no additional sentencing factors will be 36 months in prison.

Law enforcement training:

Sections 943.171 through 943.17295, F.S., contain a number of specific requirements relevant to law enforcement officer training including training in subjects such as victims assistance, juvenile sexual offender investigations, and domestic violence. Although special training relating to elder abuse is not currently required by statute, the Department of Law Enforcement states that the law enforcement officer Basic Recruit Curriculum already includes a six-hour unit entitled, Responding to the Elderly, which addresses the aging process including age-related medical conditions such as dementia, crimes

¹ "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. s. 825.101(5), F.S.

² "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. s. 825.101(4), F.S.

³ s. 827.03(3), F.S.

against the elderly, response, and resources.⁴ This training unit was developed with the assistance of the Adult Services Program of the Department of Children and Families and the Department of Elderly Affairs. The six-hour unit included in the Basic Recruit Curriculum can be extracted and delivered by law enforcement training schools as a separate specialized course to fulfill the continuing education requirement under s. 943.135, F.S.

This bill creates s. 943.17296, F.S., which requires certified law enforcement officers to receive training in identification and investigation of abuse and neglect either as a part of basic recruit training or continuing education before June 30, 2011. The training is to be developed in consultation with the Department of Elderly Affairs and the Department of Children and Family Services and must incorporate instruction on identification of and appropriate responses for persons suffering from dementia and on identifying and investigating elder abuse and neglect. If an officer fails to meet the required training, the officer's certification becomes inactive until the employing agency notifies the Criminal Justice Standards and Training Commission that the officer has completed the training.

As noted above, the curriculum provided for law enforcement officer Basic Recruit Training and the advanced training that is currently available to law enforcement officers for continuing education appear to satisfy the training requirements of the bill.⁵

C. SECTION DIRECTORY:

Section 1. Amends section 825.102, F.S., to reclassify aggravated abuse of an elderly or disabled person from a felony of the 2nd degree to a felony of the 1st degree.

Section 2. Amends section 921.0022, F.S., the Offense Severity Ranking Chart, to conform to the change made in section 1 of the bill.

Section 3. Creates section 943.17296, F.S., related to training for certified law enforcement officers.

Section 4. Proves an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁴ The Criminal Justice Professionalism Program (CJPP) is responsible for developing and maintaining the law enforcement officer Basic Recruit Training Curriculum.

⁵ According to FDLE, the CJPP is responsible for maintaining documentation on the required continuing education for criminal justice officers and, therefore, would be responsible for maintaining records of successful completion of the continuing education requirement stipulated in this bill.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On January 17, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. According to the Department of Corrections, during the 2006-2007 fiscal year there were four offenders sentenced to prison and seven offenders sentenced to probation for this offense.

According to the FDLE, the training required by the bill is included in the Basic Recruit Training approved by the Criminal Justice Standards and Training Commission. The department indicates that the bill would have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The sponsor submitted the following statement:

Frail elders and disabled adults are preyed upon by strangers, health care workers and even family members. This bill will make sure law enforcement is trained to recognize these crimes and that the abuse perpetrator gets punished with a first degree felony.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES